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April 18, 2019

Via ECF

Hon. Joan M. Azrack
United States District Court Judge
United States District Court
Eastern District of New York
Long Island Courthouse
100 Federal Plaza
Central Islip, New York 11722

Re: Pellegrino, et al. v. New York State United Teachers, et al.
Civ. Case No. 18-cv-03439 (JMA)(GRB)
Our Case No. 263067-F100

Dear Judge Azrack:

This letter is submitted by Defendants New York State United Teachers and United Teachers of Northport (collectively "Union Defendants") to inform the Court about legislation signed into law on April 12, 2019 by Governor Cuomo which affects the state law claims asserted in the complaint. Chapter 56 of the Laws of 2019, Part DD, pertinent parts enclosed, added N.Y. Civ. Serv. Law § 215 to the New York Public Employees' Fair Employment Act, N.Y. Civ. Serv. Law §§ 200, et seq. ("Taylor Law"), and provides:

Agency shop fee deductions:

1. Notwithstanding any other law to the contrary, any public employer, any employee organization, the comptroller and the board, or any of their employees or agents, shall not be liable for, and shall have a complete defense to, any claims or actions under the laws of this state for requiring, deducting, receiving, or retaining agency shop fee deductions from public employees, and current or former public employees shall not have standing to pursue these claims or actions, if the fees were permitted or mandated at the time under the laws of this state then in force and paid, through payroll deduction or otherwise, prior to [June 27, 2018].
2. This section shall apply to claims and actions pending or filed on or after [June 27, 2018].

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New York State United Teachers
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3. The enactment of this section shall not be interpreted to create the inference that any relief made unavailable by this section would otherwise be available.

Union Defendants respectfully request that the Court consider N.Y. Civ. Serv. Law § 215 in addition to the other defenses asserted in Union Defendants' motion to dismiss the complaint, served on January 21, 2019. N.Y. Civ. Serv. Law § 215 makes clear that Plaintiffs do not have any claim for repayment of agency fees paid pre-Janus v. Am. Fed. of State, Cnty. and Mun. Employees, Council 31, AFL-CIO, 138 S. Ct. 2448 (2018) under New York law.

Plaintiffs' opposition to Union Defendants' motion to dismiss the complaint is due by April 22, 2019. Plaintiffs' counsel are copied on this letter.

Thank you for your continued consideration in this matter.

Respectfully submitted,

ROBERT T. REILLY

By: /s/ Michael J. Del Piano
Michael J. Del Piano
Of Counsel

MJD/hs
Enc.

cc: All Counsel by ECF and E-mail

S01506 Summary:

BILL NO S01506C

SAME AS SAME AS UNI.

SPONSOR BUDGET

COSPNR

MLTSPNSR

Amd Various Laws, generally

Enacts into law major components of legislation necessary to implement the state education, labor, housing and family assistance budget for the 2019-2020 state fiscal year; relates to residency requirements for the purpose of qualifying for certain scholarships and financial assistance for higher education; and repeals section 609-a of the education law as added by a chapter of the laws of 2019, amending the education law constituting the Jose Peralta New York state DREAM act, as proposed by legislative bill numbers S.1250 and A.782 (Part D); relates to the arts capital grants fund (Part F); relates to authorizing the housing trust fund corporation to use funds for various housing purposes and for municipal relief to the city of Albany (Part G); relates to the initial period of licensure or registration and required inspections, background clearances and training for child care providers (Part H); requires criminal history background clearances for persons working in residential foster care programs by both the division of criminal justice services and the federal bureau of investigation (Part I); relates to residential programs for domestic violence victims (Part J); relates to persons in need of supervision (Part K); increases the standards of monthly need for aged, blind and disabled persons living in the community (Part L); amends part W of chapter 54 of the laws of 2016, relating to the powers and duties of the commissioner of social services relating to the appointment of a temporary operator, relating to the effectiveness thereof (Part M); prohibits discrimination based on source of income in housing (Part T); renames the division of veterans' affairs to the division of veterans' services, and renames the veterans' affairs commission to the veterans' services commission (Part AA); relates to the foster youth college success initiative eligibility requirements (Part BB); authorizes the setting of a reduced rate of tuition at the state university of New York, the city university of New York and community colleges for certain students participating in dual or concurrent enrollment programs (Part CC); provides that public employers, employee organizations, the state comptroller and the public employment relations board shall not be liable for and shall have a complete defense to certain claims relating to agency shop fee deductions (Part DD); and authorizes the State University of New York at Albany to lease or contract to tenants with interests that are in alignment with the academic and research of the mission of the university space in the Emerging Technology and Entrepreneurship Complex (Part EE).

S01506 Actions:

BILL NO S01506C

01/18/2019 REFERRED TO FINANCE
 02/19/2019 AMEND (T) AND RECOMMIT TO FINANCE
 02/19/2019 PRINT NUMBER 1506A
 03/12/2019 AMEND (T) AND RECOMMIT TO FINANCE
 03/12/2019 PRINT NUMBER 1506B
 03/28/2019 AMEND (T) AND RECOMMIT TO FINANCE
 03/28/2019 PRINT NUMBER 1506C
 03/31/2019 ORDERED TO THIRD READING CAL.358
 03/31/2019 SUBSTITUTED BY A2006C
 A02006 AMEND=C Budget
 01/18/2019 referred to ways and means
 02/19/2019 amend (t) and recommit to ways and means
 02/19/2019 print number 2006a
 03/11/2019 amend (t) and recommit to ways and means
 03/11/2019 print number 2006b
 03/28/2019 amend (t) and recommit to ways and means
 03/28/2019 print number 2006c
 03/31/2019 reported referred to rules
 03/31/2019 reported
 03/31/2019 rules report cal.44
 03/31/2019 ordered to third reading rules cal.44
 03/31/2019 passed assembly
 03/31/2019 delivered to senate
 03/31/2019 REFERRED TO FINANCE
 03/31/2019 SUBSTITUTED FOR S1506C
 03/31/2019 3RD READING CAL.358
 03/31/2019 PASSED SENATE
 03/31/2019 RETURNED TO ASSEMBLY
 04/01/2019 delivered to governor
 04/12/2019 signed chap.56

S01506 Text:

STATE OF NEW YORK

S. 1506--C

A. 2006--C

SENATE - ASSEMBLY

January 18, 2019

IN SENATE -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT intentionally omitted (Part A); intentionally omitted (Part B); intentionally omitted (Part C); to amend the education law, in relation to residency requirements for the purpose of qualifying for certain scholarships and financial assistance for higher education; and to repeal certain provisions of the education law relating thereto (Part D); intentionally omitted (Part E); to amend the state finance law, in relation to the arts capital grants fund (Part F); to utilize reserves in the mortgage insurance fund for various housing purposes and for municipal relief to the city of Albany (Part G); to amend the social services law, in relation to the initial period of licensure or registration and required inspections, background clearances and training for child care providers; and to repeal certain provisions of such law relating thereto (Part H); to amend the social services law, in relation to federally required background clearances for persons working in residential foster care programs (Part I); to amend the social services law, in relation to residential programs for domestic violence victims; and repealing certain provisions of such law relating thereto (Part J); to amend the family court act, the social services law and the executive law, in relation to persons in need of supervision; and to repeal certain provisions of the family court act

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD12572-05-9

S. 1506--C

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A. 2006--C

relating thereto (Part K); to amend the social services law, in relation to increasing the standards of monthly need for aged, blind and disabled persons living in the community (Part L); to amend part W of chapter 54 of the laws of 2016, amending the social services law relating to the powers and duties of the commissioner of social services relating to the appointment of a temporary operator, in relation to the effectiveness thereof (Part M); intentionally omitted (Part N); intentionally omitted (Part O); intentionally omitted (Part P); intentionally omitted (Part Q); intentionally omitted (Part R); intentionally omitted (Part S); to amend the executive law, in relation to preventing discrimination based on lawful source of income in housing (Part T); intentionally omitted (Part U); intentionally omitted (Part V); intentionally omitted (Part W); intentionally omitted (Part X); intentionally omitted (Part Y); intentionally omitted (Part Z); to amend the election law, the executive law, the state finance law, the labor law, the vehicle and traffic law, the environmental conservation law, the public health law, the general municipal law, the military law, the domestic relations law, the education law, the mental hygiene law, the elder law, the social services law, the not-for-profit corporation law, the real property tax law, the New York state defense emergency act, the administrative code of the city of New York, and the New York city charter, in relation to changing the name of the New York state division of veterans' affairs to the New York state division of veterans' services; and to amend the executive law, in relation to changing the name of the veterans' affairs commission to the veterans' services commission (Part AA); to amend the education law, in relation to the foster youth college success initiative eligibility requirements (Part BB); to amend the education law, in relation to authorizing the setting of a reduced rate of tuition at the state university of New York, the city university of New York and community colleges for certain students participating in dual or concurrent enrollment programs (Part CC); to amend the civil service law, in relation to providing that public employers, employee organizations, the state comptroller and the public employment relations board shall not be liable for and shall have a complete defense to certain claims relating to agency shop fee deductions (Part DD); and authorizing the state university of New York at Albany to lease or contract with certain tenants for the use of space in the Emerging Technology and Entrepreneurship Complex (Part EE)

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act enacts into law major components of legislation
2 which are necessary to implement the state fiscal plan for the 2019-2020
3 state fiscal year. Each component is wholly contained within a Part
4 identified as Parts A through EE. The effective date for each particular
5 provision contained within such Part is set forth in the last section of
6 such Part. Any provision in any section contained within a Part,
7 including the effective date of the Part, which makes a reference to a
8 section "of this act", when used in connection with that particular
9 component, shall be deemed to mean and refer to the corresponding
10 section of the Part in which it is found. Section three of this act sets
11 forth the general effective date of this act.

S. 1506--C

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A. 2006--C

1 tional services and for which the student may receive both high school
2 and college credit.

3 § 2. Section 6303 of the education law is amended by adding a new
4 subdivision 6 to read as follows:

5 6. Notwithstanding the provisions of any other general, special or
6 local law, rule or regulation, each community college, or the entity or
7 entities responsible for setting tuition at such institution, shall be
8 authorized to set a reduced rate of tuition and/or fees, or to waive
9 tuition and/or fees entirely, for students participating in any dual or
10 concurrent enrollment program with no reduction in other state, local,
11 or other support for such students earning college credit that such
12 higher education partner would otherwise be eligible to receive;
13 provided that, for purposes of this provision, a dual or concurrent
14 enrollment program shall mean one or more college courses taken by a
15 high school student through a community college while such student is
16 still enrolled in high school or boards of cooperative educational
17 services and for which the student may receive both high school and
18 college credit.

19 § 3. Subdivision 7 of section 6206 of the education law is amended by
20 adding a new paragraph (e) to read as follows:

21 (e) Notwithstanding the provisions of any other general, special or
22 local law, rule or regulation, the board of trustees shall be authorized
23 to set a reduced rate of tuition and/or fees, or to waive tuition and/or
24 fees entirely, for students participating in any dual or concurrent
25 enrollment program with no reduction in other state, local, or other
26 support for such students earning college credit that such higher educa-
27 tion partner would otherwise be eligible to receive; provided that, for
28 purposes of this provision, a dual or concurrent enrollment program
29 shall mean one or more college courses taken by a high school student
30 through a community college or a senior college of the city university
31 while such student is still enrolled in high school and for which the
32 student may receive both high school and college credit.

33 § 4. This act shall take effect immediately.

34

PART DD

35 Section 1. The civil service law is amended by adding a new section
36 215 to read as follows:

37 § 215. Agency shop fee deductions. 1. Notwithstanding any other law to
38 the contrary, any public employer, any employee organization, the comp-
39 troller and the board, or any of their employees or agents, shall not be
40 liable for, and shall have a complete defense to, any claims or actions
41 under the laws of this state for requiring, deducting, receiving, or
42 retaining agency shop fee deductions from public employees, and current
43 or former public employees shall not have standing to pursue these
44 claims or actions, if the fees were permitted or mandated at the time
45 under the laws of this state then in force and paid, through payroll
46 deduction or otherwise, prior to June twenty-seventh, two thousand eigh-
47 teen.

48 2. This section shall apply to claims and actions pending or filed on
49 or after June twenty-seventh, two thousand eighteen.

50 3. The enactment of this section shall not be interpreted to create
51 the inference that any relief made unavailable by this section would
52 otherwise be available.

53 § 2. This act shall take effect immediately.